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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.2.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.Nos.54 and 223 of 2000
Reference No.7/2000

The Commissioner of Income Tax
Tamil Nadu-I, Madras-34. .. Applicant

Vs

M/s.Greenham Estates (P) Ltd.
Madras. .. Respondent

PRAYER: Tax case references against the order of the Income Tax Appellate Tribunal, Madras Bench 'A', Chennai dated 7.5.1991 in I.T.A.Nos.312 and 313/Mds/1987 for the assessment years 1979-80 and 1980-81 against the Order of the Commissioner of Income Tax (Appeals) Ernakulam dated 19.1.1987 in A.No.75-CCE/CIT/82-83 against the Order of the Income Tax Officer B Ward, Companies Circle, Ernakulam dated 2.8.1982 in No.46-004-CV-5106 /CHN-CCY-(B).

For Applicant : Mrs.Pushya Sitaraman
Sr.Standing Counsel.

For Respondent : Mr.Philip George

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

Pursuant to the directions of this court dated 28.7.1997 in T.C.P.Nos.601 to 618 of 1996, the Appellate Tribunal has stated the case and referred to us the following questions of law:

(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the share income of the assessee from the firm M/s.Kadamane Estates Co. for the assessment years 1979-80 and 1980-81 should be taken as had arisen to the firm as on the previous year ended on 31.3.1978 and 31.3.1979? and

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(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal's direction to adopt the share of income from M/s.Kadamane Estates Co. for the assessment years 1979-80 and 1980-81 as derived by the firm on 31.3.1978 and 31.3.1979 respectively is in consonance with the spirit of Section 3 of the Income Tax Act, 1961.

2.1. The assessee is a private limited company owning rubber plantation. The assessee formed a partnership firm called M/s.Kadamane Estate Co., which owned a small extent of tea and coffee plantation and is engaged in the business of manufacture of tea and coffee. The assessee's accounting year is the calendar year whereas the said partnership firm's accounting year is the financial year. While computing total income for the assessment years under reference, the assessee had taken its share income obtained from the said partnership firm for the relevant calendar years. However, the Income Tax Officer included the share income provisionally subject to rectification on completion of the said firm's assessment. On appeal, the Commissioner of Income Tax (Appeals) upheld the action of the Income Tax Officer.

2.2. On further appeal by the assessee, the Tribunal held that it is only the income relating to the previous year ending 31st March, falling within the calendar year, which is the previous year under consideration of the assessee, that should be brought to tax and directed the Income Tax Officer to re-compute the income accordingly. Hence, these references by the Revenue.

3. The learned Senior Standing Counsel for the Revenue submits that this Court, in assessee's own case for the assessment years 1982-83 to 1984-85, in Commissioner of Income-tax Vs. Greenham Estates Pvt. Ltd., [2002] 254 ITR 402, answered the questions of law raised in favour of the Revenue.

4. This Court in Commissioner of Income-tax Vs. Greenham Estates Pvt. Ltd., [2002] 254 ITR 402, after taking note of the plain words used in Section 3(1)(f) of the Income Tax Act, as it stood, during the assessment years 1982-83 to 1984-85, viz.,

> "3. 'Previous year' defined.—(1) For the purposes of this Act, 'previous year', means—. . .
>
> (f) where the assessee is a partner in a firm and the firm has been assessed as such, then, in respect of the assessee's share in the income of the firm, the period determined as the previous year for the assessment of the income of the firm."

held that,

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".. sub-clause (f) to Section 3(1) of the Income Tax Act, 1961 is unambiguous which provides **that the share income of the partners in a firm shall be computed for the same period for which the income of the firm is computed for the purpose of assessment to tax. That also stands to reason as the computation of the share of the partner in the income of the firm can be made only when the income of the firm and accounts of the firm for the year are finalised. This sub-clause does not deal with all the income of the assessee who happens to be a partner in a firm. It is only concerned with the assessee's share income in his capacity as a partner.**

In cases where the "previous year" followed by an assessee is different from the "previous year" followed by the firm in respect of the share in the income of the firm, the "previous year" followed by the firm is necessarily to be regarded as the "previous year" for the assessment of the share income of the partners of the firm, although for the other income of the assessee, the assessee's previous year is to be followed. The other sub-clauses of section 3(1) do not in any manner control section 3(1)(f) which deals with one type of income and fixes the previous year in respect of that income alone."

(emphasis supplied)

5. It is accordingly a settled law that for the purpose of assessment of share income of the assessee, the previous year followed by the firm should alone be followed by the assessee, who is a partner of the said firm, and the said proposition is not applicable to other income of the assessee.

6. Applying the ratio laid down by this Court in Commissioner of Income-tax Vs. Greenham Estates Pvt. Ltd., [2002] 254 ITR 402 to the facts and circumstances of this case, we hold that the Tribunal was not right in holding that notwithstanding the previous year with reference to which the firm was assessed being the financial year, the share income of the assessee as a partner in the firm was required to be assessed with reference to the calendar year as the "previous year".

These references are answered in favour of the Revenue and against the assessee.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal,
   Bench 'A',
   Rajaji Bhavan, Besant Nagar,
   Chennai 90.(5 copies with records)
2. The Secretary, Central Board of Direct Taxes,
   New Delhi (3 copies)
3. The Commissioner of Income-tax (Appeals),
   Ernakulam.
4. The Commissioner of Income-tax,
   Madras.
5. The Income Tax Officer
   B-Ward, Companies Circle
   Ernakulam.

+ 1 CC to Mr. Philip George, Advocate SR NO 8091

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